IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 927 of 2004

to

FIRST APPEALNo 954 of 2004

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

BHIKHABHAI CHUNIBHAI PATEL

Appearance:

MR HL JANI for the Appellants-State

MR HB PATEL and MR YATIN SONI for Original Claimants

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI
Date of decision: 23/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1.0 Heard the learned counsel for the respective parties. Appeals admitted. Mr. Yatin Soni waives service for the respondents-original claimants.

2.0 On the joint request of learned counsel for the respective parties these appeals are taken up for final hearing today.

3.0 Heard the learned counsel for the respective parties. These are appeals filed by the appellant State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the 2nd Joint Civil Judge (Senior Division) Ahmedabad (Rural), Navrangpura, Ahmedabad under section 18 of the said Act in Land Reference Case Nos.223, 226 to 249, 251, 252 and 330 of 2000.

3.1 The lands bearing Survey No.177 of village Mahijada, Taluka Dascroi, Dist. Ahmedabad were acquired for the purpose of road between Saroda to Mahijada. The relevant notification under section 4 of the Act was issued on 14.12.1996.

3.2 The Special Land Acquisition Officer declared the award under section 11 of the said Act and granted Rs.5/- per square metre.

3.3 Dissatisfied with the compensation determined by the Special Land Acquisition Officer, the claimants preferred Land Reference Case Nos.223, 226 to 249, 251, 252 and 330 of 2002 before the Reference Court under section 18 of the said Act. The 2nd Joint Civil Judge (SD), Ahmedabad (Rural), after appreciation of the evidence on record, by judgement and award dated 26.11.2002, determined the market value at Rs.80/- per square metre as additional compensation over and above the compensation already awarded by the Land Acquisition Officer.

4.0 It is this common judgement and award which is

the subject matter of the present appeals at the instance of the State.

5.0 We have heard the learned counsel for the respective parties and carefully perused the impugned judgement and award. We have also perused the oral and documentary evidence on record to which our attention has been drawn.

6.0 Mr. H.L. Jani, learned AGP submitted that the Reference Court has committed an error in accepting the contention of the claimants that the distance between the village Bareja and Mahijada is less than 10 Kms. In this context Mr. Soni for the claimants pointed out that one Mr. Bharatbhai Ramnikbhai Doshi was examined at Exh.55 on behalf of the State Government. He has stated that village Bareja is situated at 10 kms from the acquired land and that Bareja is situated on Ahmedabad National Highway. However, the Reference court has accepted the distance between the two villages about two and half kms. The Reference Court found that the sim of village Mahijada and Bareja is adjoining to each other. Mr. Soni has relied upon a decision of the Supreme Court in the case of Thakarsibhai Devjibhai Vs. Executive Engineer, reported in AIR 2001 SC 2424, wherein it is held that the question of distance between the two classes of lands by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. No such things are pointed on the part of the State Government.

6.1 However, without going into the exact distance between the two villages, it is an admitted fact that the land was acquired for the development of a road and the earlier acquisition was also for expansion of the road. The claimants relied upon a judgement passed by 3rd Extra Assistant Judge, Ahmedabad in Land Acquisition Case No.375/1994, which is produced at Exh.42. The claimants have also produced judgement passed by this Court in First Appeal No.1431/99 at Exh.46 and in F.A. No.4657/2001 at Exh.47. In the said judgement the additional compensation awarded was Rs.51/- per square metre. While dealing with the matter the Reference Court has also relied upon a decision in the case of Special Land Acquisition Officer, Bharuch Vs. Motibhai Mohanbhai, reported in 1997(2) GLH 773 wherein it is held that the Court has to adopt 10% rise in price of the agricultural lands per year. In that case the section 4 notification was published in the year 1991-92 and in the present case the notification was published on

14.12.1996. Therefore, the Reference Court, considering the price rise, has rightly come to the conclusion that the claimants were entitled to Rs.80/- per square metre by way of additional compensation. Similar view is taken by the Apex Court in the case of Karan Singh and Ors. Vs. Union of India, reported in 1997 (8) SCC 186 and in the case of Bhim Singh Vs. State of Haryana, reported in 2003(10) SCC 529. Therefore, looking to the evidentiary material produced on record and the conclusions reached by the Reference Court, it cannot be said that the additional amount awarded by the Reference Court is in any way excessive which calls for interference in these appeals.

6.2 Mr. H.L. Jani, learned AGP next contended that the Reference Court has wrongly directed the State Government to return 5% Government share to the new tenure land. He has relied upon a decision of this Court in the case of Mehta Rameshchandra Vs. Special Land Acquisition Officer, reported in 2001(4) GLR 3672 wherein it is held that if there is any land which is anew tenure land, the 5% deduction of government share shall be made in accordance with the provisions of section 11-A of the Gujarat State Amendment Act. It was held that the 5% Government share is lawful deduction in case of new tenure lands out of the compensation determined under section 23 of the said Act. Mr. Soni for the claimants could not contest this contention. Therefore the direction issued by the Reference Court in respect of return of 5% Government share in respect of new tenure land is bad and illegal and the appeals are required to be allowed to the aforesaid extent.

7.0 In the result, the appeals are partly allowed. The direction given by the Reference Court directing to return or adjust the 5% government share to the new tenure land is hereby quashed and set aside. It is held that the Government is entitled to deduct 5% government share for new tenure land. The judgement and award of the Reference Court is modified to the aforesaid extent. The rest of the award stands confirmed. No order as to costs. Decree shall be drawn accordingly.

[KSHITIJ R. VYAS, J.]

[K.S. JHAVERI, J.]

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